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### THE LAWYER OF THE FUTURE.\*

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The question for more narrow discussion is: What is the effect on our profession of present social conditions and the tendencies we have been discussing, and what will be the effect on the lawyer of the future.

It is always difficult to obtain a proper perspective of a movement of which we are a part, or of times in which we are actors. No reliable history of such can be written until the writer is removed a sufficient distance to be free from bias or prejudice, just as the observer must climb to the mountain top from out the mists of the valley, if he would see and know the sunlight in all its splendor and clearness. In this discussion I must necessarily confine myself to a study of the American lawyer, but I doubt not the conclusions reached with reference to him will find general application.

Fifty years ago every lawyer—I mean the representative lawyer, or the average of the best of our profession—was an all-round lawyer. He studied the law as a science, the most queenly of all the sciences. He was versed in its broad underlying principles that run like threads of gold through the warp and woof of our social fabric. He found the fountain-heads of the streams that watered the whole field of jurisprudence, and was able to follow these streams to their utmost limits. He was in turn a criminal lawyer or an equity lawyer, equally at home in ejectment or in mercantile law. He scorned the appellation of “case lawyer.” He reasoned from principle, and his logic could be met only by like logic. His books were largely commentaries and institutes. He knew every page of Blackstone and Coke. The leading cases were used chiefly because of the reason brought to bear in them upon the subjects considered. He did his own annotating, and his marginal notes were often valuable contributions to the science by way of suggestion or comment upon the principles under discussion. He was rounded, by the life he led—the study and reflection, the contact with human nature, the sharp contests with his fellow-attorneys in the intellectual arena—into the strongest and broadest and best among men. He was the first man in his community always. He molded public sentiment and led the populace on all public questions. He had the confidence of all, and had only to submit to be chosen to fill the upper-

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\* A portion of a paper read before the Virginia State Bar Association, at Old Point Comfort, July 18, 1900, by R. Tate Irvine, of Big Stone Gap.

most places of public trust. He was a splendid creation, but he is passing away, and in his stead is coming a different man; I will not say an inferior man, or a worse man, or a less patriotic man, but surely a different man, as different as his environment, and, like the old lawyer, the creature of his environment.

The all-round lawyer is now the exception. Our profession is rapidly drifting into specialists, and the lawyer of the future must be more and more a specialist, whether he will or not. In other words, as the agent and the servant of society, he must obey the inexorable laws of the social compact, and adapt himself to their changing requirements. Few indeed are the lawyers who now attempt to practice in all the fields into which the law has ramified. As a science following material progress, it has expanded more during the past fifty years than in the previous five hundred years of its history. One hundred years ago there were only eighteen hundred lawyers in all England; there are now fifteen thousand. In this country in 1850 the ratio of lawyers was only one to each one thousand of population, while in 1890 it had increased to one in each seven hundred, there being then eighty-two thousand, two hundred and seventy-seven lawyers in the United States. It is estimated that the census of this year will show that we now number one hundred and twenty-five thousand. Our editions of legal publications, reports, text books, digests, reviews and collected cases are almost as numerous as the lawyers themselves. We have our highest courts, State and Federal, turning out each year their vast number of reports, passing upon multiplied thousands of new principles, or of old principles with new applications. This is but the response of our profession to the demands of the new commercial and industrial life that absorbs us. We cannot stand still; we must go forward with the tireless march of progress. Wherever there are new forms of industry, wherever the imagination or ingenuity of man has stretched forth a hand into hidden fields and brought to light unseen treasures, or pointed the way to new and better methods, there the law must follow to solve with its enlightened principles the new problems that inevitably arise. This of necessity begets and demands the specialist, and will more and more require specialists as development and combination in the various lines of human endeavor increases.

Let us follow for a moment the development of a modern railroad system, the first rail of which was laid within the memory of men now living, and its effect on our profession where the two have touched. In the beginning there were a number, perhaps from ten to twenty

local roads, each a separate corporation operating independently of all others. At the termini of the road and at various sections along the line were counsel, each supreme in his sphere, and working out along independent lines the various questions that arose within his jurisdiction. He carried into the courts and fought to the end various cases of eminent domain, of the rights and liabilities of common carriers, of master and servant, of contributory negligence, and the numerous other questions that arose in this expanding field of progress. All this tended in the highest degree to manly independence and personal force in the lawyer.

In the course of time the one short railroad was united with another, and these two with yet another, until several were brought into a small system ramifying some State or connecting two or more large commercial cities. Later on the small system became consolidated with several others, until we have one of the greater systems of the present, embracing thousands of miles of road, reaching into a number of States and competing with rival systems for the transportation and commerce of a vast territory. Thousands of men are employed and almost countless legal questions, large and small, arise each year. This necessitates the classification and concentration of the legal work of the road. There are several general counsel with the division of labor given to each of questions that fall within the same general class. These are men of large caliber and recognized executive capacity. They are paid large salaries and their whole time is absorbed by the one client. They in turn have division counsel, who are likewise as a rule salaried men with no other clients. Under these are local counsel, until the legal department, like the operating department of the road, becomes a great bureau, with chiefs, associates, assistants and clerks. Questions arising in any part of the system are referred to the head office for consideration or settlement. Independent action and individual accountability is more and more being withdrawn from local counsel, the tendency of which must be to render them less self-reliant and forceful, and more nearly machines.

Recently a horse was killed by a railroad train in a county in Southwest Virginia. A report of the facts and circumstances was sent forward by the trainmen, and it reached the head of the legal department of that branch of cases in a distant city. A copy of this report was promptly sent back to the local counsel in the county in which the killing occurred, together with a printed brief of the law from the standpoint of the railroad covering similar killings, in which all cases

that had been passed upon by the higher courts of all the States were collected and digested. The work of the local counsel in defending the suit for damages was thus rendered easy, and it was apparent that the legal department of this road had ready-made briefs, printed and on hand for distribution to its attorneys everywhere in the system, covering all usual or important damage questions that might arise. The chief legal office of the road was supplied with a complete library, with reports from all the higher courts of this country and England, and particularly with all the series of collected cases bearing on railroad or damage questions. They had competent assistants and clerks whose duty was to digest these cases and aid in preparing arguments and briefs.

Here was a clear case of "Mellin's Prepared Food" for the lawyer. This illustration is, doubtless, common to all the great branches of industry in our day, the steel and iron companies, mining corporations, banks, insurance, telegraph and telephone companies, steamship lines, collection agencies, patent and pension law, and the hundreds of other forms of human endeavor to which the work of the lawyer attaches. In all these branches, specialists collect the multitude of cases that are annually decided by the courts bearing upon the particular subject in question. Text-books are written upon each subject, bureaux and departments are maintained in which this work is most thoroughly done, and the interests at stake are most admirably guarded. This may be the introduction of the highest and best business methods, dictated by the soundest business policy, but the effect is to create within our profession a large number of specialists dealing almost exclusively with one branch of the law. These men are most effective in their spheres. The interest of clients are, perhaps, promoted by these methods, but the methods are not such as tend to virility in the individual lawyer. He becomes less self-reliant and forceful, and his work more mechanical. A few men at the head do the thinking for the entire system. The amount of thinking done is minimized, and clerical work and digesting is substituted. That versatility and readiness, the power of original thought and investigation, the use of logic and the argument from principle that should characterize a manly and intellectual profession must necessarily tend to decay under such influences.

We are, also, too rapidly drifting toward case law. It has been the boast of our profession in the past that it was *par excellence* the intellectual profession. Its members stood forth as intellectual gladiators

ready to meet in the arena all comers, equipped by education and training to seize hold of principles and apply them to any case that might arise in the affairs of men, and to sweep away the cobweb of bad or inapplicable precedents and get at the very right of the case.

In case law, memory is substituted for reason, research for logic, precedent for right principles and the justice of a cause. Every lawyer should know the elementary principles of the science, and should be trained to apply them. No man can possibly remember all the cases. No two cases are ever exactly alike. The faculty to discriminate will be weakened or lost by the methods of case law. The weight of cases may be one way to-day, but on a new delivery by the courts to-morrow it may be the other. By haphazard or oversight, the investigator may fail to find, or by misfortune fail to procure, one or more cases bearing on the subject in hand. If, therefore, the decision of a particular question is to be referred to cases and precedents, it is as apt to be wrong as right, depending as it must upon numerous extraneous circumstances and conditions. The only correct method for bench and bar is to start on the bed-rock of principle, and from this with sure reason by trained faculties to deduce from correct premises sound conclusions. When these methods are pursued, the law as a science is secure, but when departed from, it must be a mariner at sea without a compass.

Are not our courts catching the infection, and narrowing the scope of judicial force and originality? Are not our judges too much becoming case judges and precedent chasers? One cannot read the vast majority of opinions handed down by our courts of last resort of to-day and compare them with the opinions of the old masters without being struck with the decadence exhibited in the former. A broad grasp, the power of logic and reason, the effort of the mind to arrive by analysis and deduction at right principles characterizes the one, while with the other the opinions are becoming more and more a mere digest of precedent, narrowing the utterances and binding and controlling the decisions of the court. Our judges too frequently, it seems to me, take the narrow and short road to a conclusion of the case in hand, rather than to rise to great heights when ample opportunities are afforded, and to point the way by force of reason to great principles that will stand out to the profession as the light-house to the mariner. Fortunately for us in Virginia, our highest court has been for the most part in the past, and is now, but little subject to this criticism.

The tendency of the times is illustrated further in our law schools

and the teaching of law. In former days some master of the science, like the great Tucker in Virginia, had around him in his private office a number of students, who were taught the cardinal points of the science, and from these to take their bearings and find their course to any desired destination. There were impressed upon them the character, the high aims, the force and virility of the preceptor. Again, in the earlier law schools, one or two professors of the science was ample. But few text books were taught, but they were taught thoroughly. Case law was a mere incident. A vast library was considered bewildering to the student rather than an aid. He was drilled in the leading principles of the common law and in the methods of procedure that had been sanctioned by the wisdom and experience of the centuries. His diploma after one or two years of study was an evidence of his proficiency in the primary principles that underlie the great fabric of the law. How effective was this training, the proficiency and success of our profession to this day may answer.

Now from two to four years in a law school is necessary. From three to twelve teachers in each faculty are required. The number of text books have been multiplied several times. A large library embracing all important cases is an essential adjunct. In the law schools, as in the academic schools, students are more and more specializing and narrowing their studies to those particular lines to which they intend to devote themselves in after years. A separate text book is required on each important branch of the law, while formerly one or at most a few chapters in a comprehensive work was sufficient. I would not disparage the good work done by our modern law schools. I believe in the wisdom, for the most part, of those who in our institutions of learning are entrusted with the intellectual training of the future lawyer. This method of teaching is doubtless necessary to equip the young lawyer for his coming contact with the actual conditions of his life, but it illustrates the tendency of our profession and shows the point to which we are drifting.

This is a commercial age, and the legal profession is being swept along irresistibly as a part of the great commercial movement, and is itself becoming too much commercialized. We find that one of the effects of the industrial trust is to create a monopoly by strangling individual competition. The man who has an independent business with an incentive to individual effort is compelled by the remorseless laws of the trust to pool it in the common corporation, while he himself is either shut out entirely from active participation in its affairs or

becomes a mere hireling or salaried man, subject to be discharged at any time at the will of his superiors. So in the specialization of the law, the tendency is more and more to the establishment of legal trusts, the gathering into the hands of a few men of superior opportunities or of large executive and organizing capacity a wide range of legal work. They employ other attorneys as salaried assistants and subordinates, who may be unable in the fierce rivalry to maintain themselves in independent positions. These become mere pieces of the machinery of the larger office, with all incentive or opportunity gone for the development of those traits that make the true lawyer.

Already in our large cities and commercial centers we have ample evidence of this tendency to form law trusts. A number of lawyers, several times as many as usually compose a partnership, associate themselves together and pool their business, each taking a certain proportion of the common receipts. The names of only a few of the most prominent members of the association appear to the public. In all other respects the association is managed on the plan of a corporation. Each member makes a specialty of some branch of legal work; some do office work only, others appear in the courts, and all business that comes to the office is assigned to each specialist according to its nature. Such an association can and does provide the most complete outfit of assistants, digesters, clerks and all the mechanical aids to quick and accurate work. This seems to be the logical result of the principle of division of labor and combination of effort now so wide-spread, and to be in accordance with modern ideas, and to attain the best *purely business* results. We cannot say that thoroughness is not thereby promoted and in most cases the best interests of clients subserved, but in the fierce competition that must increase as the world grows how is the cumulative force of such a combination to be met except by a like combination? How will small partnerships, or the individual lawyer working single-handed, compete with a compact and trained body of specialists like these any more than the small retail store can compete with the department store, or the small manufactory with the industrial trust? We have examples of the way in which legal work is absorbed by such methods in the trust companies that now do a large part of the fiduciary work of the lawyer, and in the collection agencies that absorb the larger portion of this branch of the practice.

It seems to me that many of the successful lawyers, so-called, of to-day—those who make the most money out of their work—are not necessarily the greatest lawyers, in the true sense of the word, but



they are the men who can use the energy and brains and time of others ; who can organize a large office, and by the division of labor among salaried employees reduce to a minimum the necessity for original thinking, and for that personal force and power of reasoning so necessary to the development of the finest and best manhood which has been the glory of our profession in the past. While these tendencies are not yet so apparent as others I have been discussing, it seems to me that they are some of the highly probable results of the commercializing of our calling.

Commercialism has made the love of money the controlling passion of our times, and brought about a mad race for riches. The ease with which individual fortunes have been made, and the large number of those around us who have the luxuries of life, and who yield to the allurements of pleasure, have their effect on our profession, and place before us an unworthy standard—the desire to get rich quickly. This spirit is the deadly Upas tree which casts its blight upon all who touch it. Will the lawyer of the future be strong enough and brave enough to resist its enticing shade ? Will he be able to dispel from his mind the gathering of riches as the chief ideal of this noble profession, however worthy wealth may be as a mere incident to its higher and better aims ?

It was never the ideal of the old lawyer to get rich. Mr. Minor well summed up to his classes that the lot of the lawyer was to “work hard, live well and die poor.” The love of his profession as such, or the work for its own sake, the intellectual joys, the *gaudia certaminis*, or delights of conquest, the tug and tension of forensic battle, the clash of ideas and generous rivalry among noble men, the good fellowship with his peers, but above all the unfolding to one’s self of those manly powers and intellectual gifts which are the budding and flowering of character itself—these are the sure rewards, the sweet draughts from the fountain of life to the true lawyer that spur him to his utmost tether, and make of him the most splendid example among men. As has been said by another : “Our reward is the comfort of her whose love has made our pathway more luminous than the sun the tops of the mountains.” Let us pray that this lofty spirit may animate the lawyer of the future. If so, he will have won a far more signal victory over self than was ever won by the lawyer of the past, for the temptations to stray from the hard and rugged road into the primrose path of dalliance have multiplied many times within the last generation, and they will continue to multiply during the century that lies before us.

We are called into counsel by the winners of fortunes. We learn their methods. We are their friends and guides. Our opportunities to share with them in commercial ventures are the best. The allurements of such fellowship are enticing. It is more than human to resist them, and not to yield like Roderigo to the advice of Iago, "Put money in thy purse."

What will be the moral effect upon the lawyer of the future of the great temptations held out to him in the mighty conflicts now on between private and selfish interests and the public good? When the interests of great corporate clients shall run counter to the demands of the highest public safety, will he be strong enough and brave enough to advise against the selfish course, and to espouse the cause of the right though commercially weak? Will the spirit of the old Roman decree, *Cavendum est ne quid damni capiat Respublica*, that rang in the ears of Roman senators and inspired them to lofty patriotism, determine his action? Or will he not in the end become a party, nay even a willing helper, for the wrong against the right, where selfish interests weigh like a mountain in one scale and the barren ideal of right like eiderdown in the other?

Again, in what estimation will the lawyer of the future be held by the world at large? Will his influence in the affairs of state, his leadership in his community, his high rank in all social and political matters, be increased or diminished during the twentieth century? We cannot shut our eyes to the present popular distrust among the masses of corporation lawyers. Whether or not this distrust will in the future extend to the entire profession by reason of its existence toward certain classes in the profession is a serious question. Corporations have no souls, but they must have brains, and it is most generally true that among the best and most capable of our profession are corporation lawyers. That the employment in most cases is legitimate; that the services rendered are conscientiously and effectively rendered, and that there is nothing in such service necessarily incompatible with the discharge of the highest civic and social duties, must be admitted. That much of the prejudice against corporations is unfounded is true, but that this prejudice is widespread and deeply rooted among the American people is equally true.

It has, therefore, come to pass that voters in choosing representatives, from members of town council to president of the republic, have a strong aversion to corporation lawyers. This should not be true, for, as I have said, this class of men is, as a rule, more capable than

any other of rendering efficient public service. There should not be that distrust between the people at large and corporate interests which these facts signify. Those who manage corporations should realize that fair and honest dealing with the public is the very foundation stone of continued corporate prosperity. The interests of the corporation and of the individual in our republic should be one. The corporation should not on its side seek unusual or unjust franchise privileges, or, having them, should not use them in an improper or high-handed manner; and citizens, on their side, should realize that corporate interests are merely the aggregate of individual interests; that those who manage them are citizens as others are; and that the prosperity of the corporation should mean the prosperity of all classes. There should be a clean and wholesome sentiment of mutual trust and confidence between the two, if we would reap to the fullest extent the rich responsibilities of our national, commercial and civic life.

I have, perhaps, presented but one side of the picture. There is a brighter side. The tendencies I have been discussing are not wholly bad. Specialization of legal work, as of any other, tends to greater thoroughness and accuracy. While the expansion of the science is making the all-round lawyer more and more an impossibility, it is worth enquiring what the effect of specializing would be on the lawyer himself and his profession, and on the public in general. There is no doubt it will make the individual lawyer a narrower man, but he will be more thorough; he will attempt less, but he will do better what he attempts. He will be more methodical and business-like, not only in professional matters, but in his private affairs, and, in consequence, he will be a thriftier man; he will be better equipped with books and working appliances, and will be able to accomplish more in a given time than the lawyer of the past. He will, therefore, have more leisure to devote to general culture, which in turn will begin to broaden him on all lines. His work will not be so much in the forum and in the eye of the public; it will be more quiet and unobtrusive, but it will go on with no less zeal and correctness. The larger part of it will be advisory, in preventing litigation instead of conducting causes in court after litigation has begun. He will be less on dress-parade, but more effective in briefs and in the real work of his calling; he will develop less forensic powers but better business faculties; his work will not have the absorbing charm and variety of incident that it had to the old lawyer; but, as with any other science, he who devotes himself with singleness of purpose to any branch of

the law may be rewarded with a passionate love for the object of his labors.

Upon the profession at large the effect of specialization will be, I believe, to raise the general average, though there will be fewer towering figures than in the past. No man can be a successful specialist in any branch of the law without a liberal general knowledge of the leading principles of the entire science, to which must be added exceptional study and attainments in the specialty pursued. Another effect will be to render the science more nearly fixed and stable than at present. All those who devote themselves to the same department of the law will inevitably co-operate for uniformity in the interpretation of the laws in that department. The collecting together of all important cases on the same subject, the writing of separate text-books on those subjects, and the comments of writers and reviewers will tend to harmonize differences and to bring about that uniformity which seems to-day to be the despair of the profession. When this comprehensive system is developed, when all our statute laws, Federal and State, will have been brought into harmony and a uniform system of interpretation adopted, the law as a science will have reached heights otherwise unattainable, and will form the perfection of laws now little dreamed of in our philosophy.

Again, the specialization of the lawyer's work will be a distinct loss to the public at large, in that it will mean the withdrawal of the lawyer to a greater or less degree from that active participation and leadership in public affairs that has always characterized the all-round lawyer. The lawyer will be succeeded in large measure by the press. The newspapers to-day can reach a thousand men where the lawyer or other public leaders from the hustings can reach but one. This must cause a decadence in a large measure of those forensic and versatile gifts that are inseparable in our minds from the lawyer in the past.

In spite of the tendency toward case law, there will still be much demand for analysis and original thinking, in finding general principles from the mass of precedents, and in applying the correct principles in given cases. The lawyer of the future, though relying less upon original force and native talent, must be more widely read and more accurate in his deductions, to compete in the hard contests of the forum.

Then, too, there will always be great questions involving life, liberty, and the security of property, that cannot be commercialized, and that will require for their solution the brightest statesmanship and

strongest legal grasp. These are questions as old as humanity itself, and will recur so long as liberty is a thing desired, and our profession will always furnish fearless exponents of the higher principles of civil and religious liberty, and noble patriots who, in the greatest causes, will forget selfish interests and stand out upon the high ground of the public good. There will remain numberless other questions involved in the science of the law which will not be absorbed into corporate channels, and which will require as of old able and independent minds to grapple with; and while many of our profession may be dragged down by the commercializing tendencies of the age, others will be strong enough to resist them and to give to the world renewed examples of what is highest and best in our great vocation.

Still further the tendency of our profession is toward higher entrance qualifications. This again will react toward higher standards in the matured lawyer. The weaklings will drop by the wayside, the fittest will survive. This association has done much for the profession in Virginia in this direction. It is our duty to keep the standard of our profession advanced. An old professor of Presbyterian theology was accustomed to say to his classes that no young man should preach who could keep from it. So, it seems to me, it should be with our profession. It should be looked upon as a calling not second to that of the ministry, and no young man should enter the law unless he feels irresistibly impelled to it by the divine afflatus that would call him to years of toil and self-denial for the love of pure intellectual pleasures; for finding and enforcing the truth; for the prevalence of right and the suppression of wrong.

In conclusion, we know that in the twentieth century, as in all centuries, brains will dominate, talent will be sought after, work will be rewarded, and character will not be bought with money. The lawyer who has the elements of success in him will find as wide a field and as fruitful a harvest as in the palmiest days of the old order of things.

As the old century closes and the new one opens we should turn our faces to the rising sun and resolve to do all in our power, individually and collectively, still more to elevate and ennoble that queenly science which we have chosen to follow.